

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 10, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 52, 1/10/2003; HB 53,
1/10/2003; HB 57, 1/10/2003
Executive Action: HB 52; HB 92

HEARING ON HB 57

Sponsor: REP. HAL JACOBSON, HD 54, Helena

Opening Statement by Sponsor:

REP. JACOBSON opened on HB 57 stating this bill increases the penalty for failure to stop and render aid at the scene of an accident involving injury to or death of any person. The intent of this bill is to make people more responsible for vehicular crimes. He stated that at present, it is a misdemeanor for failing to stop and render aid at the scene of an accident and punishment includes jail time of 30 days to one year and/or a fine of \$100 to \$5000.

EXHIBIT (juh05a01)

{Tape: 1; Side: A; Approx. Time Counter: 6 - 40}

Proponents' Testimony:

John P. Connor, Assistant Attorney General, Department of Justice (DOJ), supported HB 57 to make people more responsible for their vehicular crimes and to address. He stated that leaving the scene is what makes it an egregious offense. He stated that in regard to penalty increases, it is not the DOJ's intent to seek prison or jail time per se, but rather to provide options for the judge to utilize at sentencing. He proposed an amendment, Exhibit 2, which amends p.1, line 6-7 to add language stating "providing a mental state for the offense" and amending p. 1, line 18 to insert the mental state of purposely or knowingly.

EXHIBIT (juh05a02)

{Tape: 1; Side: A; Approx. Time Counter: 46 - 118}

Shawn Driscoll, Chief of Highway Patrol, supported HB 57.

Jim Campbell, Montana Association of Chiefs of Police, supported HB 57.

Jim Smith, Montana County Attorneys Association and Montana Sheriffs and Peace Officers Association, supported HB 57.

Opponents' Testimony:

Mike Barrett, Poet and Extensive Letter Writer to State and Federal Government, Helena, opposed HB 57. Mr. Barrett spoke of three accidents he was involved in as a teenager, one of which he

fled. He submitted an exhibit stating there should not be any fatal crashes.

EXHIBIT (juh05a03)

{Tape: 1; Side: A; Approx. Time Counter: 216 - 228}

Questions from Committee Members and Responses:

REP. RICE asked **Mr. Connor** whether there are any amendments or provisions for the individual driving the car in an alleged hit-and-run where the driver leaves the scene due to his own injury or to get help. **Mr. Connor** stated he would not charge under those circumstances and would not object to an amendment. **REP. HARRIS** expressed the same concern as **REP. RICE** had regarding the situation where you have to leave the scene to get help. **REP. HARRIS** asked both **Mr. Connor** and **Officer Driscoll** about leaving the scene and both gentlemen responded this statute would not be used in that circumstance.

REP. NOENNIG asked **Mr. Connor** about the mental state of "purposely or knowingly" in the amendment to HB 57. **Mr. Connor** responded that the commission of the crime is in the departure itself and if the person subsequently dies, you can be charged with the felony offense. **Mr. Connor** stated if you hit someone's car, crash and take off because you do not have insurance, that would be a misdemeanor. The mental state of "purposely or knowingly" applies to both the misdemeanor and the felony.

{Tape: 1; Side: A; Approx. Time Counter: 339 - 472}

CHAIRMAN SHOCKLEY commented about someone leaving a crime when they were not guilty of committing a crime. He stated, for example, car A hits car B which is propelled into car C. Under this bill, car C could be eligible for the 10 years if he was hit and left the scene. **CHAIRMAN SHOCKLEY** stated that the language of the bill states "the driver of any vehicle involved in an accident" which would encompass car C being prosecuted just for leaving a scene in which he was struck. **Mr. Connor** stated he would not prosecute the hittee.

{Tape: 1; Side: A; Approx. Time Counter: 477 - 515}

Closing by Sponsor:

REP. JACOBSON closed on HB 57 stating that he spoke with Sheriff Driscoll and that a number of states do have the felonious component that could be included here. He recommended a DO PASS.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 17}

HEARING ON HB 53

Sponsor: REP. BRAD NEWMAN, HD 38, Butte

Opening Statement by Sponsor:

REP. NEWMAN opened on HB 53 stating this bill would substitute the Detention Center for the court in notifying victims when the defendant is admitted to bail. This bill would affect defendants accused of partner or family member assault, stalking, or violation of a protective order. He stated that Montana law already requires notice to victims. He submitted to the committee that the Detention Centers rather than the courts could provide more immediate notice to victims. This bill would make it harder for law enforcement but would elevate victim rights to the same status as defendant rights. He closed stating that if it saves one life, it is a worthwhile change.

{Tape: 1; Side: B; Approx. Time Counter: 18 - 109}

Proponents' Testimony:

Jim Smith, Montana Sheriffs and Peace Officers Association, supported HB 53 stating this law is not a Swiss watch but would help make victim notification work more efficiently.

Ellen Donahue, Butte, Save Space, supported HB 53. She stated this bill will help victims and provide law enforcement support.

Harris Heimes, Minister, Big Sky Christian Center, supported HB 53. He has a ministry in Missoula for prisoners. He believes HB 53 will assist in more efficient notice for victims.

Beth Satre, Montana Coalition of Domestic and Sexual Violence, strongly supported HB 53.

EXHIBIT(juh05a04)

EXHIBIT(juh05a05)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. PARKER asked **REP. NEWMAN** whether this includes juvenile detention. **REP. NEWMAN** stated this does not cover the Youth Court Act and that is outside the scope of this bill.

{Tape: 1; Side: B; Approx. Time Counter: 152 - 216}

Closing by Sponsor:

REP. NEWMAN closed on HB 53 stating this makes a good law a better law and if it saves one life, it is a worthwhile bill.

HEARING ON HB 52

Sponsor: **REP. BRAD NEWMAN, HD 38, Butte**

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 245 - 516}

REP. NEWMAN opened on HB 52, stating it amends current Montana Hate Crimes Law. He noted the strong feelings on both sides of the issue; that it is not going away, and is part of the beautiful patchwork of Montana. He described the Montana patchwork as made up of small farmers and business owners; men and women; straight and gay; healthy and disabled; Catholic, Protestant, Jewish, and agnostic. He stated Montana is the last best place because the people are as diverse as our landscape. HB 52 recognizes that patchwork called Montana with its traditional values of independence, dignity, respect, and a live-and-let-live attitude. HB 52 would amend 45-5-221 and 45-5-222. A hate crime intentionally targets a victim because of the actual or perceived race, color, national origin, religious belief, creed, gender, sexual orientation or disability of the victim. He explained a hate crime is different as it specifically targets the victim for one of the above enumerated factors. HB 52 would add gender, disability, and sexual orientation. He said that hate crimes not only affect the victims and their friends and family, but also are crimes against the community and Montana values.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 64}

Proponents' Testimony:

Betty Kieske, Montana Human Rights Network, supported HB 52. She said she has a gay son and that the state should take biased crimes seriously. She spoke of an attack against a child at

school over sexual orientation. She stated the other children were afraid to speak out.

Linda Gryczan, Montana Women's Lobby, Helena, supported HB 52 explaining why she felt women should be included in this bill. She advised that other states include women in their antihate crimes legislation as well as the federal government.

EXHIBIT(juh05a06)

{Tape: 2; Side: A; Approx. Time Counter: 120 - 150}

Nels Wilkins, Helena, supported HB 52. He stated he has been a victim of violent attacks at school.

Brenda Wahler, Helena, supported HB 52 as a mother and school teacher. She told of a bully in her class who called another student a derogatory slur. She described horrible things the bully said about gay people. Ms. Wahler stated her daughter came out five years after the bully incident and announced she is gay. Ms. Wahler described her fear that her daughter is less safe from people like the bully due to her sexual orientation.

Karl Olson, Director of Pride, Helena, supported HB 52. He stated that Montana needs to send a message and pass this bill.

Gene Fenderson, Montana Progressive Labor Caucus, stood in strong support of HB 52. He stated society must send a signal that hate is a bad and a wrong thing. He reflected about the hatred against women, blacks, gays, Catholics and Jews as he grew up. He stated hatred for any reason should not be tolerated.

{Tape: 2; Side: A; Approx. Time Counter: 309 - 339}

Cindy Weese, Director, YWCA, Missoula, supported HB 52 stating women are attacked precisely because they are women. She stated federal legislators recognized this when in 1999, they passed the Violence Against Women Act.

Carol Snetsinger, Missoula, supported HB 52 which she stated is critical to her and her family. She described a vicious attack against her and her partner; a letter with derogatory slurs regarding her sexual orientation containing white powder.

Dr. Maryanne Guggenheim, retired physician and legislator, supported HB 52. She stated she and her partner received many threatening phone calls and letters during her time as a legislator. She expressed her fears and concerns and urged the committee to pass HB 52.

EXHIBIT(juh05a07)

Beth Satre, Public Policy Specialist for the Montana Coalition Against Domestic and Sexual Violence, supported HB 52 particularly the portion dealing with violence against women.

{Tape: 2; Side: B; Approx. Time Counter: 487 - 512}

Anita Roessman, Attorney, Montana Advocacy Program, Helena, supported HB 52, stating that through the ages, people have feared or vilified people with developmental disabilities. People with disabilities have been kept out of sight and out of mind. Many disabled people have been institutionalized. She stated there are hate crimes committed against people with disabilities and urged support for this bill.

EXHIBIT(juh05a08)

Betty Whiting, Association of Churches, supported HB 52.

Joan Hurdle, Helena, urged support for HB 52.

Al Davis, Mental Health Association, urged support for HB 52.

EXHIBIT(juh05a09)

Chris Christiaens, Helena, supported HB 52.

Steve and Jennifer Hendricks, Helena, both supported HB 52.

Opponents' Testimony:

Gilda Clancy, Montana Eagle Forum, opposed HB 52, citing numerous FBI statistics on hate crimes. She stated the FBI does not consider intimidation as a real crime and according to the 2001 FBI report, hate crime laws are not necessary.

EXHIBIT(juh05a10)

{Tape: 2; Side: B; Approx. Time Counter: 80 - 126}

Ginney Dodge, Citizen's Network, opposed HB 52 stating homosexuality has no immutable characteristics. Ms. Dodge stated homosexuality is a choice and there is not a gay gene. She explained that homosexuals can change their behavior. She believes the biggest problem with the bill is there is no definitive method of proving homosexuality.

EXHIBIT(juh05a11)

Greg Trude, Helena, opposed HB 52 stating it protects only a small percentage, less than 1% of the population. He urged people to be morally rather than politically correct by voting no on HB 52.

Tyler Stockton, Helena, opposed HB 52. He stated that some churches have declared that homosexuality is a sin in God's eyes. He urged this bill not pass stating it creates unnecessary legislation. He stated Montana does not need this legislation and quoted Chief Justice Karla Gray as stating we have too many designer laws.

{Tape: 2; Side: B; Approx. Time Counter: 201 - 232}

Julie Millan, Executive Director Montana Family Coalition, strongly opposed HB 52. Ms. Millan stated that gays are a privileged class in the United States. She quoted some statistics about homosexuals' income and that it is higher than their straight counterparts. She reiterated this bill is an attempt to classify homosexuals as a true minority which she believes they are not.

William Wise, opposed HB 52 stating there is no homosexual gene.

Dan McCrossin, Hamilton, opposed HB 52 stating he was raped in Montana State Prison (MSP) and urged the Committee to not support this bill.

Eugene Williams, opposed HB 52, stating hatred is an equal opportunity affliction and that we will always have haters amongst us. He stated that this bill is selective and provides extra protection to those deemed worthy. He urged a DO NOT PASS.

EXHIBIT (juh05a12)

Harris Himes, Attorney, opposed HB 52, stating that sodomy is still a crime in Montana. He urged people to uphold the Montana Constitution and not pass this bill. He emphasized homosexuality is a sin, that Montana needs to continue to stand for God and uphold the Constitution.

{Tape: 2; Side: B; Approx. Time Counter: 470 - 518}

{Tape: 3; Side: A; Approx. Time Counter: 1 - 45}

Joel Purkerson, Hamilton, opposed HB 52 stating he has been the victim of discrimination all his life. He stated he despises hate crimes and that it is wrong wherever it is found. He stated

that God is love. He expressed his concern that HB 52 can be misconstrued.

Shannon Bennett, Hamilton, opposed HB 52.

Don Dugan, Hamilton, strongly opposed HB 52 stating Montana only needs to enforce current laws.

EXHIBIT (juh05a13)

Informational Testimony: None

Questions from Committee Members and Responses:

REP. GALLUS asked Eugene Williams about his statement that caucasians are not selected for special protection and whether he read HB 52. **Mr. Williams** replied in the negative. **REP. GALLUS** read lines 13-14 of the bill, "a person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, or national origin" as current language and does not describe the actual race of a person. **REP. GALLUS** stressed that a white man or a person of color is protected whereas a disabled person or a gay person would not be under the present statute.

{Tape: 3; Side: A; Approx. Time Counter: 101 - 148}

REP. LANGE asked **REP. NEWMAN** whether Article II, section IV of the Montana Constitution enumerates civil rights for Montana citizens. **REP. NEWMAN** stated the framers of the 1972 Montana Constitution were intelligent and farsighted. He urged the committee to look at the Constitution as a whole and to not single out pieces.

Closing by Sponsor:

REP. NEWMAN closed on HB 52, stating 27 states have enacted legislation that encompass the categories in HB 52. He cited 18 states (including Montana) with hate crimes legislation that do not cover sexual orientation, and only five states have no hate crimes legislation. He urged the committee to keep in mind SB 177 which would only add sexual orientation to the hate crimes law whereas HB 52 also includes gender and disability and is all encompassing. He posed that disapproving of someone being gay or lesbian is like disapproving of the wind, or the rain; that it exists. The issue is whether Montana will extend protection to the disabled, gender or sexual orientation of people. He concluded with a comment that democracy is not two wolves and one sheep voting on what to have for lunch.

EXHIBIT(juh05a14)

{Tape: 3; Side: A; Approx. Time Counter: 193 - 342}

EXECUTIVE ACTION ON HB 53

Motion/Vote: REP. HARRIS moved that HB 53 DO PASS. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 92

Motion: REP. LASZLOFFY moved that HB 92 DO PASS.

Discussion:

REP. HARRIS expressed concern for local law enforcement; it is already overworked.

REP. NEWMAN agreed with REP. HARRIS and stated this bill is unworkable.

Motion: REP. FACEY moved to AMEND HB 92 STRIKING THE WORD "SHALL" AND SUBSTITUTING "MAY."

Discussion:

REP. HARRIS stated amending the bill would clutter up the bill.

Vote: Motion to amend failed 1-17 with REP. FACEY voting aye.

CHAIRMAN SHOCKLEY stated that the Committee is back on HB 92 as written.

Motion: REP. CLARK moved to AMEND HB 92 (stating the peace officer who cites a youth shall make a reasonable effort to notify the parents within seven business days by a postcard in the mail).

Discussion:

REP. CLARK stated he empathizes with the intent of HB 92 but believes that this requirement would be difficult to implement.

REP. NOENNIG stated this bill has a number of problems.

REP. RASER opposed the amendment.

REP. HARRIS opposes the amendment stating it would be too costly.

REP. SALES opposed the amendment stating it could cost over \$200,000 to notify parents in this manner.

REP. RASER stated that she agreed with those who oppose HB 92 stating the bill will succeed in meeting it's intent.

REP. NEWMAN stated it would be too costly.

Vote: Motion on amendments fails 3-15 with REPS. CLARK, NOENNIG and FACEY voting aye by voice vote.

CHAIRMAN SHOCKLEY stated **REP. CLARK'S** motion to amend HB 92 fails and Committee is back on HB 92 as written.

Vote: Motion DO PASS HB 92 Fails 0-18.

Motion/Vote: REP. FACEY moved to **TABLE HB 92. Motion to Table HB 92 carried 18-0.**

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh05aad)